IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

WP(C).No. 22643 of 2007(U)

PETITIONER:

THE CANARA BANK,
CHANGANASSERY BRANCH,
REPRESENTED BY SRI.K.V.ANIL,
SENIOR MANAGER.

BY ADV. SRI.P.GOPINATHA MENON

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY THE
SECRETARY TO THE GOVERNMENT,TAXES DEPARTMENT,
GOVERNMENT SECRETARIAT,THIRUVANANTHAPURAM.

2. THE ASSESSING AUTHORITY,
OFFICE OF THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES DEPARTMENT,
KOTTAYAM.

3. THE DISTRICT COLLECTOR,KOTTAYAM.

4. THE TAHSILDAR,CHANGANASSERY.

5. SRI.BIJU JOSEPH,
PUTHUPARAMBIL HOUSE,VEROOR P.O,
CHANGANASSERY.
(PROPRIETOR M/S.SUPER DUST CATTLE FEEDS).

6. THE SUB REGISTRAR,CHANGANASSERY.

BY ADV.SHRI.C.K.GOVINDAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 22643 of 2007

Dated, this the 24th day of July, 2007

J U D G M E N T

Heard learned counsel for the petitioner and learned Government Pleader. Petitioner Bank pursuant to proceedings initiated under Securitisation Act sold defaulter's property for recovery of arrears due to the Bank. 4th respondent issued prohibitory order against registration of the sale on the ground that the land is subject to charge for sales tax arrears. The mortgage deed is created only in 2003 and sales tax arrears appears to be for the year 2000-01. Section 26A of the KGST Act creates charge over the property of the defaulter and therefore, State has first charge over the property of the defaulter. Learned Government Pleader referred to a Division Bench judgment in **State of Kerala Vs. Rajmohan Cashew (P) Ltd.** reported in 2005 (2) KLT 131, whereunder, this Court held that State has priority even on mortgaged debt due to the financier. In this case, the mortgage deed appears to be created only subsequent to incurring of tax liability by the dealer. In any case, petitioner's claim should be considered by the 4th respondent in a claim petition to be filed

under Sec.46 of the RR Act. This writ petition is, accordingly, disposed of directing the 4th respondent to lift the attachment and withdraw the prohibitory order against registration of sale on petitioner Bank depositing the tax amount and interest thereon but without any collection charges to the 4th respondent. After depositing the money, petitioner Bank can file a claim petition before the 4th respondent claiming the amount pursuant to mortgage in its favour. It is for the 4th respondent to decide the claim with reference to Section 26A of the KGST Act based on the decisions of this Court and that of the Supreme Court relied on by the learned counsel for the petitioner in this Court, such as **Dena Bank Vs. Bhikhabhai Prabhudas Parekh & Co.**, reported in 2000 V SCC 694.

This writ petition is disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE)

jg